

Exhibit 3

UNITED STATES DISTRICT COURT
DISTRICT OF UTAH, CENTRAL DIVISION

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DIVERSI-PLAST PRODUCTS, INC.,
a Minnesota corporation,

Plaintiff,

vs. No. 2:04-CV-01005PGC

BATTENS PLUS, INC., a JUDGE: PAUL G. CASSELL
California corporation,

Defendant.

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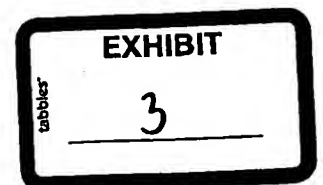
DEPOSITION OF
TED FRANKLIN ANDERSON

May 5, 2005

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Ref. No. B655

Reported by: DEBRA P. CODIGA, CSR No. 5647



1 APPEARANCES

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3 For the Plaintiff DIVERSI-PLAST PRODUCTS, INC.:

4 PATTERSON, THUENTE, SKAAR & CHRISTENSEN, P.A.
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8 For the Defendant BATTENS PLUS, INC.:

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13 Also Present:

14 SCOTT GEORGE, Videographer

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14:51:06 1 Q. In light of this document -- and I think you
14:51:09 2 testified there were no other sales besides these two
14:51:13 3 referenced in this exhibit -- is this the earliest sale
14:51:17 4 made on the BattenUP product?
14:51:18 5 A. We never sold this. We paid for it, but we
14:51:22 6 didn't sell it. We gave it as -- we -- we allowed
14:51:27 7 roofers to put it on a roof to -- to try it out.
14:51:30 8 Q. Oh, so Olympic Supply didn't pay you any money
14:51:33 9 for this?
14:51:33 10 A. No, they didn't. All they did was agree to
14:51:35 11 receive it into their warehouse for me, and then I
14:51:39 12 picked it up.
14:51:40 13 Q. So was this the first public shipment to
14:51:44 14 anybody besides Battens Plus for the product?
14:51:46 15 A. Yes.
14:51:47 16 Q. So on March 18. So same question, then, for
14:51:52 17 the Cordova shipment in October of '03. Was that a sale
14:51:59 18 in the sense that you received money from Cordova?
14:52:02 19 A. This was received from Cordova. Cordova
14:52:08 20 purchased part of it; other supply companies purchased
14:52:10 21 other parts of it.
14:52:12 22 Q. All related to the same shipment, though?
14:52:13 23 A. Yes. They did basically the same as Olympic
14:52:16 24 Supply and received it for us.
14:52:27 25 MR. MACARI: Okay. Let's go off the record for

10:00 1 report, but I'll be finding out. Also being used

10:00 2 currently under solar panels, be installed with solar

10:01 3 panels. That's being used now. I'm not sure if they

10:01 4 even require evaluation report for the use they are

10:01 5 using it for solar panels.

10:01 6 Q BY MR. MACARI: Okay.

10:01 7 A Also being used for separating ventilation

10:01 8 spacers between concrete slabs, and also for -- an

10:01 9 architect had contacted us, said they wanted to use our

10:01 10 battens for ventilation of a floor ventilation in an

10:01 11 apartment -- or in office building that they were

10:01 12 building, they were going to use it as spacers in the

10:01 13 floors.

10:01 14 Q Okay. Well, let's go through some of these.

10:01 15 Okay. So first of all this Legacy Report that

10:01 16 you obtained in 2003 and it's been renewed every year

10:01 17 since then --

10:01 18 A Yes.

10:01 19 Q -- is not relating to those uses, it's

10:01 20 specifically for use on clay or concrete tile roofs?

10:01 21 A Yes, it is.

10:01 22 Q Okay. Let's just go through this, go through

10:02 23 this installation guide. It's on the second page.

10:02 24 Is that the installation -- at least the

10:02 25 installation figures --

11:18 1 A Not in advertisements, conversations with

11:18 2 people we have.

11:18 3 Q Are those recently with regard to the

11:18 4 documents we just looked at?

11:18 5 A Yes.

11:18 6 MR. MACARI: Why don't we go off the record

11:18 7 for a couple minutes.

11:18 8 (Off the record.)

11:29 9 Q BY MR. MACARI: Mr. Anderson, I asked you a

11:29 10 question earlier about your advertising with respect to

11:29 11 tile roof systems, and there was an objection. I'm

11:29 12 going to rephrase one of the questions.

11:29 13 When -- is it true that all of your

11:29 14 advertisement and instructions to your customers to

11:29 15 date have been directed towards using the BattenUp

11:29 16 product to support tile on a roof?

11:29 17 A To date, yes.

11:29 18 Q Was the intention that's what they are going

11:29 19 to use it for?

11:29 20 A Well, we assume, but we assume that they are

11:30 21 being used for other purposes, too, because we do talk

11:30 22 to people about it for use as a wall ventilation. As

11:30 23 far as our brochures or written advertising I'd say

11:30 24 yes, that's all it is. We've spoke to people about

11:30 25 using it for different purposes.

11:34 1 using it in solar panels, but I'm not the expert. I

11:34 2 don't know.

11:34 3 But we do plan on getting, looking for --

11:34 4 going -- looking and getting evaluation report for the

11:34 5 wall ventilation if it's required. I'm not even sure

11:34 6 if it's really required.

11:34 7 Q Do you know how many battens have been sold,

11:34 8 if any, for any of these other uses?

11:35 9 MR. WILCOX: Objection, that calls for

11:35 10 speculation.

11:35 11 THE WITNESS: Should I answer?

11:35 12 MR. WILCOX: Please. Yes, please, you answer.

11:35 13 THE WITNESS: I have no idea whatsoever.

11:35 14 People have said they are going to use it, and I don't

11:35 15 know if they buy it or not.

11:35 16 MR. MACARI: And a couple -- I'm almost done

11:35 17 here -- questions with regard to Battens Plus.

11:35 18 Q Does Battens Plus sell any other product

11:35 19 besides the BattenUp product?

11:35 20 A No.

11:35 21 Q Do they perform any other services like

11:35 22 installations, anything like that?

11:35 23 A No.

11:35 24 Q Has Battens Plus installed or demonstrated

11:35 25 installation of the BattenUp product for customers?